

Disclosure of Interest

This case study highlights the importance of disclosing a licensee's interest in the transaction, regardless of the role he or she plays in the transaction, and engaging in behavior that is honest and not deceptive to the public.

THE SITUATION:

On December 12, 2018, the Board received a written complaint from Jacob Boyle and Judy Goor, Principal Broker and Supervising Broker, respectively, for Real Estate Group LLC regarding Adrian Holt and a short sale with which he was previously involved.

Mr. Adrian Holt was issued a real estate salesperson license on January 28, 2008. Mr. Holt had been affiliated with Real Estate Group LLC between April 20, 2008 and December 3, 2014. Between December 3, 2014 and October 8, 2018, Mr. Holt was associated with Real Estate Group Referral LLC. In January 2019, Mr. Holt allowed his license to expire.

THE INVESTIGATION:

Investigators learned that in 2017 Ms. Dorothy Potter contacted Ms. Rebecca Garcia at Real Estate Group LLC and asked if she could find a buyer to purchase her mother's house at 2566 My Drive, Garden City, Virginia, in its as-in condition. Ms. Potter explained that she was the executor of the estate, that the property had suffered extensive damage in a storm, and her mother had left mortgage payments unpaid. Due to the damage, the bank holding the mortgage agreed to allow Ms. Potter to proceed with a short sale. On February 21, 2018, Ms. Potter entered into an Exclusive Authorization to Sell Listing Agreement with Real Estate LLC, which was signed by Ms. Garcia.

Ms. Garcia, a real estate salesperson, managed a real estate team called Central Real Estate Group, where she had more than 10 associates licensed through Real Estate Group LLC. Her team included Mr. Carl Wesley, and Ms. Angela Vida, who were all experienced real estate licensees.

Investigators learned that on February 22, 2018, Ms. Garcia contracted Mr. Holt for his assistance with this transaction. In addition to serving as a real estate licensee at Real Estate Group Referral, LLC, he owned and managed a short sale negotiating company. Mr. Holt agreed to be a buyer and short sale negotiator in the transaction.

On that same day, Ms. Garcia named Mr. Wesley, her assistant, to be the listing agent for the transaction. Ms. Garcia told investigators that she asked Mr. Wesley to be the listing agent because he had experience with the short sale document software used by many banks.

Investigators also learned that Ms. Garcia asked Ms. Vida to be the buyer's agent and represent Mr. Holt. Ms. Garcia told investigators that Ms. Vida was named as the buyer agent to give her experience in short sale transactions. She stated, "Mr. Holt, an experienced real estate professional and short sale negotiator himself, requested this so that he could provide her with valuable training."

However, Ms. Vida told investigators that her involvement in the transaction was minimal, and that she did not assist with drafting the Contract, nor did she review any documents pertaining to the

transaction. Mr. Wesley also reported that he had minimal involvement in the transaction, despite being listed as the seller's agent. He reported that Ms. Garcia would tell him what to do, and he would take care of it at her direction.

After Ms. Potter signed her listing agreement, Super Saver Development Group, LLC entered into a Residential Contract of Purchase with Ms. Potter, on behalf of the Potter Family Trust. Ms. Vida and Mr. Wesley, both with Real Estate Group LLC, represented the parties to the transaction.

The contract included a Short Sale Contingency Addendum signed by Mr. Holt on behalf of Super Saver Development Group, LLC, and by Ms. Potter, on behalf of Potter Family Trust. It was ratified on February 23, 2018.

On February 27, 2018, Super Saver Development Group, LLC became registered as a limited liability company in Virginia. It named Mr. Holt, and Together As One, LLC, as managers. Ms. Garcia is the sole owner and manager of Together As One, LLC. However, investigators noted that the contract did not disclose that Ms. Garcia nor Mr. Holt had an ownership interest in the entity that was purchasing the property.

Mr. Holt reported to the Board that he and Ms. Potter knew each other professionally for many years, and that Ms. Potter had full knowledge of his professional credentials. Further, he stated that his license was a referral license only and was not renewed. He also stated that while he was a licensee, he never used his license to professionally represent any client, and therefore did not consider it necessary for him to disclose his licensee status.

In reviewing the documents for the transaction, investigators learned that the bank holding the mortgage approved the sale on the condition that neither the Seller nor the Buyer receive any proceeds from the sale of the property. It further advised that the real estate broker was to receive \$15,400 in commission. Mr. Holt signed an affidavit on September 23, 2018, on behalf of Super Saver Development Group, LLC that stated the following:

- 1. The purchase and sale transaction reflected in the Agreement is an "Arm's Length Transaction" meaning that the transaction has been negotiated by unrelated parties, each of whom is acting in his or her own self-interest, and that the sale price is based on fair market value of the Property. With respect to those persons signing this Affidavit as an agent for the Seller, the Buyer, or both, those agents are acting in the best interest of their respective principal(s).*
- 2. There are no hidden terms or hidden agreements or special understandings between the Seller and the Buyer or among their respective agents that are not reflected in the Agreement or the escrow instructions associated with this transaction.*
- 3. Neither the Seller(s) nor the Buyer(s) will receive any funds or commission from the sale of the Property. The Seller(s) may receive a payment or incentive if it is offered by the Lender and/or Service. Any incentive payments will be paid at the time of closing and will be reflected on the HUD-1 Settlement Statement.*

Mr. Wesley and Ms. Vida also signed the affidavit, but denied any recollection of signing the document. Mr. Holt told investigators that the affidavit is something that is used to make the market work, but “in the world of short sales, as a practitioner, you have to know how things work. There are no rules. You just tell the lender everything and see what sticks.”

The sale of the property closed on October 4, 2018.

On February 2, 2020, the Board adopted consent orders finding Ms. Garcia, Ms. Vida, and Mr. Wesley in violation of Board Regulations as a result of the transaction.

THE RESULT:

The Board determined that Mr. Holt failed to disclose his ownership interested in Super Saver Development Group, LLC, the entity that was attempting to acquire the subject property. The Board noted that if a licensee is active with a firm or referral firm, the Board recognizes that individual as a licensee and requires him or her to comply with the Board’s regulations.

Further, it found that Mr. Holt cooperated with others in violating Board Regulations, failed to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public and engaged in improper, fraudulent, or dishonest conduct. The Board issued a fine of \$4,500 and revoked Mr. Holt’s license.